

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08cv404**

**UNUM LIFE INSURANCE COMPANY)
OF AMERICA,)**

Plaintiff,)

Vs.)

ORDER

**BRIAN K. LEWIS; BRENDA)
SANFORD; and CYNTHIA SANFORD,)**

Defendants.)

THIS MATTER is before the court on Brenda Sanford's and Cynthia Sanford's Motion for Summary Judgment. Defendant Brian K. Lewis is advised in accordance with in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), that he carries a heavy burden in responding to a motion for summary judgment. Rule 56(e), Federal Rules of Civil Procedure, provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed.R.Civ.P. 56(e). This language means that if Mr. Lewis has any evidence to offer to show that there is a genuine issue for trial, he must now present it to this court in

a form which would otherwise be admissible at trial, i.e., in the form of affidavits or unsworn declarations. An affidavit is a written statement under oath; that is, a statement prepared in writing and sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted. Affidavits or statements must be presented by plaintiff to this court by December 22, 2008, and copies must be sent to counsel for all other parties. As stated by Rule 56(e), Mr. Lewis's failure to respond may result in the summary resolution of this action in favor of the moving parties.

ORDER

IT IS, THEREFORE, ORDERED that Brian K. Lewis **RESPOND** as herein instructed to Brenda Sanford's and Cynthia Sanford's Motion for Summary Judgment (#13) not later than December 22, 2008.

Signed: December 8, 2008



Dennis L. Howell
United States Magistrate Judge

